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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,886	03/09/2004	Herbert C. Preul	PREUL-02A	2886
26875	7590	01/13/2006	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			RIVELL, JOHN A	
			ART UNIT	PAPER NUMBER
			3753	

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/796,886

Applicant(s)

PREUL, HERBERT C.

Examiner

John Rivell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/19/05 (RCE).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 5, 2005 has been entered.

Claims 1-9 remain pending.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4 and 6-9 are rejected under 35 U.S.C. §102 (b) as being anticipated by Gordon.

The patent to Gordon discloses a “wastewater source control system for reducing entry of wastewater with sanitary sewage plumbing fixtures (e.g. sinks, tubs, toilets, etc.) of a building to a sewer main (12 in the street) in response to a high flow in the sewer main (12), the wastewater source control system comprising: building drain piping (represented by drain pipe 10) comprising running traps (circa 1947 all building drain systems more than likely were required by plumbing codes to include “running traps” for all fixtures collecting sewage or waste water from building plumbing fixtures) having upstream ends connected to respective ones of plumbing fixtures; a sewer service line (10) comprising an upstream end connected to the building drain piping

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downstream of the running traps, the sewer service line comprising no connection to a plumbing fixture supplying wastewater with sanitary sewage without an intervening running trap, and a downstream end connected to the sewer main (12 in the street), the sewer service line (10) conducting a flow of wastewater with sanitary sewage from the running traps to the sewer main (12 in the street); a flow control device (valve 16 and float operator 29 alone; see column 3, lines 14-25 for discussion of the device absent the separate pump 35 and associated controls) installed in the sewer service line (10) downstream of the running traps, the flow control device (16) automatically closing in response to a backflow of wastewater and/or stormwater from the sewer main (12) entering the sewer service line (10) and contacting and closing the flow control device, the closing of the flow control device substantially inhibiting the flow of waste water with sanitary sewage from the running traps from flowing into the sewer main (12), and the flow control device (valve 16) automatically opening in response to the backflow of wastewater and/or stormwater receding from contact with the flow control device, thereby permitting a normal flow of wastewater with sanitary sewage from the running traps through the sewer service line (10) and into the sewer main (12); and a detention tank (sump 13) connected in the sewer service line upstream of the flow control device (valve 16) and downstream of the running traps, the detention tank (13) detaining substantially all of the flow of wastewater with sanitary sewage from the running traps in response to the flow control device (valve 16) being closed and detained wastewater with sanitary sewage draining from the detention tank (13) upon the flow control device (16) subsequently opening" as recited.

Regarding claim 4, in Gordon, "the detention tank (13) is (read as being) disposed near an upstream end of the sewer service line (10)" as recited.

Regarding claim 6, in Gordon, "the detention tank (13) and flow control device (valve 16) are (read as being) disposed near an upstream end of the sewer service line (10)" as recited because, as recited in claim 7, "the detention tank (13) and flow control device (valve 16) are located inside a perimeter of the building" as shown by foundation wall 11.

Regarding claims 8 and 9, in using the device of Gordon one necessarily performs a "method of reducing entry of wastewater with sanitary sewage from plumbing fixtures (e.g. sinks, tubs, toilets,, etc.) of a building into a sewer main (12 in the street) in response to a high flow in the sewer main, the method comprising: providing building drain piping (10) comprising running traps (circa 1947 all building drain systems more than likely were required by plumbing codes to include "running traps" for all fixtures collecting sewage or waste water from building plumbing fixtures) having upstream ends connected to respective ones of the plumbing fixtures, a sewer service line (10) comprising an upstream end connected to the building drain piping downstream of the running traps, the sewer service line comprising no connection to a plumbing fixture supplying wastewater with sanitary sewage without an intervening running trap, and a downstream end connected to the sewer main (12), the sewer service line (10) conducting a flow of wastewater with sanitary sewage from the running traps to the sewer main (12), a flow control device (valve 16 and float operator 29 alone; see column 3, lines 14-25 for discussion of the device absent the separate pump 35 and

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associated controls) connected in the sewer service line (10) downstream of the running traps and receiving the flow of wastewater with sanitary sewage from the running traps, and a detention tank (sump 13) connected in the sewer service line (10) upstream of the flow control device (valve 16) and downstream of the running traps; automatically closing the flow control device (16) in response to a backflow of stormwater from the sewer main (12) entering the sewer service line (10) and contacting and closing the flow control device (16), the closing of the flow control device substantially inhibiting the flow of wastewater and sanitary sewage from the running traps from flowing into the sewer main (12); and detaining substantially all of the flow of wastewater with sanitary sewage from the running traps in the detention tank (13) while the flow control device (16) is closed" as recited.

Regarding claim 9, in using the device of Gordon, one necessarily further performs a method "further comprising: automatically opening the flow control device (16) in response to the backflow of stormwater receding from contact with the flow control device (16); and automatically draining the detained wastewater with sanitary sewage from the detention tank (13) in response to the flow control device (16) being open" as recited.

Regarding applicants remarks filed December 5, 2005 as they may apply to the above, the device of Gordon, issued in 1947, is believed to include "running traps" in the building upstream of and fluidly connected to the drain pipe 10, based on the reasonable belief that circa 1947, building codes were more than likely to require such.

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Every fixture within the building, including sinks, tubs, toilets, etc. that conducts sewage and waste water is believed to include the recited "running trap".

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon.

The patent to Gordon discloses all the claimed features with the exception of having the "flow control device disposed near a downstream end of the sewer service line (claim 2) nor the "detention tank disposed near a downstream end of the sewer service line (claim 3).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to physically relocate the valve element 16 and/or detention tank 13 to any physical location in the sewer service line of the building feeding the sewer main 12 in the street , since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70. Here, relative to the physical location of the equivalent parts in Gordon, the claims merely require a different physical location yet mechanically connected to the same drainage line from the building.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon in view of Smith.

The patent to Gordon discloses all the claimed features with the exception of having "a service box" with the flow control device at valve 16 located therein.

The patent to Smith discloses that it is known in the art to employ at a "service box" A including a hinged top cover h, a valve device F located therein preventing

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backflow of sewerage liquid from the sewer main in the street to the service line of the building for the purpose of containing the valve in a serviceable location for cleaning and/or repair.


It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Gordon a "service box" encasing the valve element 16 therein for the purpose of containing the valve in a serviceable location for cleaning and/or repair as recognized by Smith.

Applicants remaining arguments filed December 5, 2005 merely rely on the dependence from an "allowable claim 1" for patentability. As demonstrated above, it is believed that the claims are properly rejected under 35 USC 103.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Rivell whose telephone number is (571) 272-4918. The examiner can normally be reached on Mon.-Thur. from 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (571) 272-4930. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


John Rivell
Primary Examiner
Art Unit 3753

j.r.